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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/010,798 11/13/2001 Stefan Tobolka SIM0080 3063

832 7590 06/03/2003

BAKER & DANIELS  
111 E. WAYNE STREET  
SUITE 800  
FORT WAYNE, IN 46802

EXAMINER
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SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

10/010,798

Applicant(s)

TOBOLKA, STEFAN

Examiner

John Sipos

Art Unit

3721

-- The MAILING DATE of this communication appears n the cover sh t with the correspond nc address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003 .
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 34-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8-14,16,18-20,22-24 and 34-65 is/are rejected.
- 7) ☒ Claim(s) 4,6,7,15,17 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_ .

### ***REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS***

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 48 and 61-64** are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedence in claim 48 for the "said heat sealing bands and cutting element". Claims 61-63 are duplicates of claims 55-57 depend and therefore should be cancelled. Claim 63 improperly depends on claim 52 and should correctly depend on claim 57.

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### ***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

**Claims 1,2,5,8-10,12,13,18 and 19** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Tobolka (EP0995683 - cited by applicant). The patent to Tobolka shows a form-fill-seal machine which comprises opposing sealing jaws having a pair of curved bands 226 between which is positioned a cutter band 212. The functional statement that the sealing band is "configured to define temperature gradients therealong" is given little weight. Note that such a function occurs in most sealing bands by merely turning the power on and off. Note that no positive structure is claimed to support this function.

**Claims 1,2,5,8-13,16,18,19,22-24 and 51-65** are further rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Tobolka (EP0995683 - cited by applicant) in

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view of Wright (4,075,818). The patent to Tobolka lacks a temperature gradient defining structure. The patent to Wright shows a sealing mechanism for a form-fill-seal machine that comprises of convex sealing band 20/38 that is designed so that temperature gradients are created and controlled (see column 5, lines 8-32 and column 6, lines 16-48). It would have been obvious to one of ordinary skilled in the art to substitute the sealing bands of Wright for the sealing bands of Tobolka to more positively control the temperatures of the bands and seals.

**Claims 1-3,5,8-10,12-14 and 18-20** are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Tobolka (EP0995683 - cited by applicant) in view of Rucker (4,079,570). The patent to Rucker shows a sealing mechanism for a form-fill-seal machine that comprises of a sealing band 12 that is designed with spaced "fins" 13 that inherently create temperature gradients and form strong seals. It would have been obvious to one of ordinary skilled in the art to substitute the sealing bands of Rucker for the sealing bands of Tobolka to form stronger seals.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

**Claim 48** is rejected under 35 U.S.C. ' 102(b) as being clearly anticipated by the references to Tobolka (EP0995683) or Tobolka (PCT 0995683). Each of he references to

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Tobolka shows a heat sealing jaw and cutter 226 and 60, respectively) that comprise of curved bands.

**Claims 49 and 50** are rejected under 35 U.S.C. ' 102(b) as being clearly anticipated by the references to Wright (4,075,818). The patent to Wright shows a sealing mechanism for a form-fill-seal machine that comprises of at least one convex sealing band 20/38 mounted on an insulation layer 34.

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***ALLOWABLE SUBJECT MATTER***

**Claims 4,6,7,15,17 and 21** are objected to as being dependent upon a rejected base claim, but **would be allowable if rewritten in independent form** to include all of the limitations of the base claim and any intervening claims.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter Vo, can be reached at (703) 308-1789.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

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